



AN EASY GUIDE TO INTERNATIONAL HUMANITARIAN LAW

IHL Resource Centre
2017



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AN EASY GUIDE TO
INTERNATIONAL HUMANITARIAN
LAW IN THE OCCUPIED
PALESTINIAN TERRITORY

IHL Resource Centre
2017



Published by:

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Cover Picture: Nasser Najadah sits next to his destroyed home in Dkaika. As of November 2016, the Israeli Civil Administration has issued 115 demolition orders against structures including cisterns and even the wretched outdoor bathrooms as follows: 4 structures are demolished, 33 are in process and 78 are on hold due to legal processing.

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Designed by: Marwan Hamad,
InterTech, Ramallah

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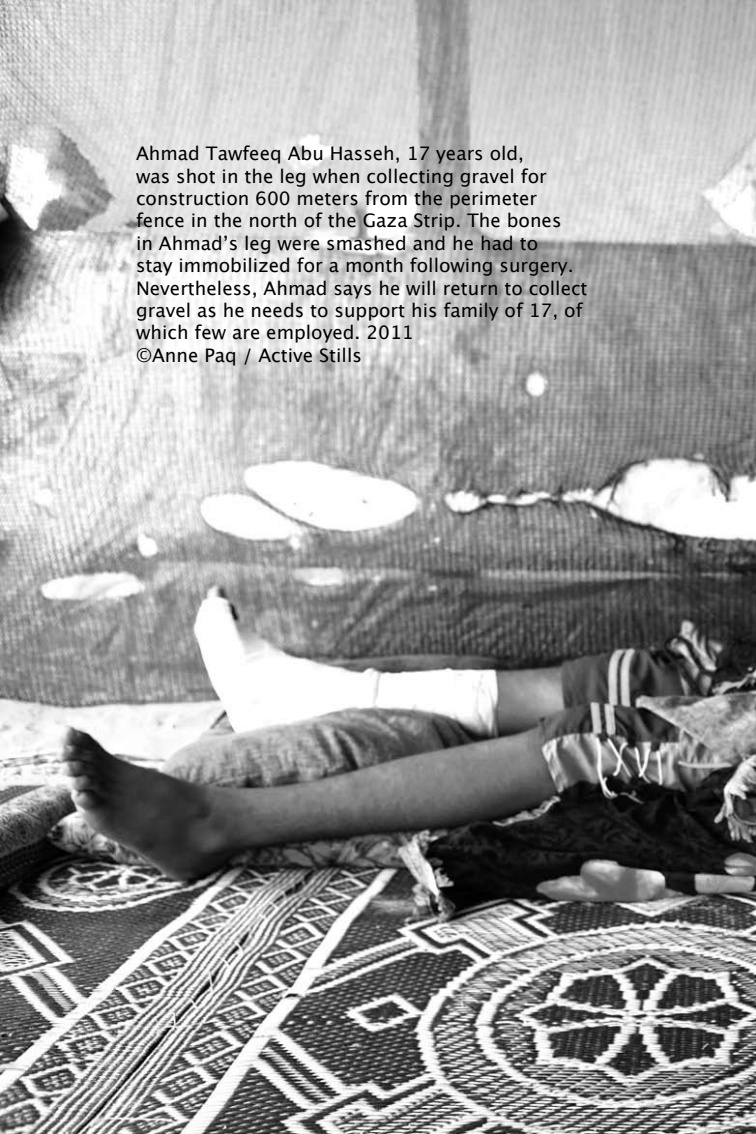
Diakonia works together with partners from the civil society in both Israel and the occupied Palestinian territory.

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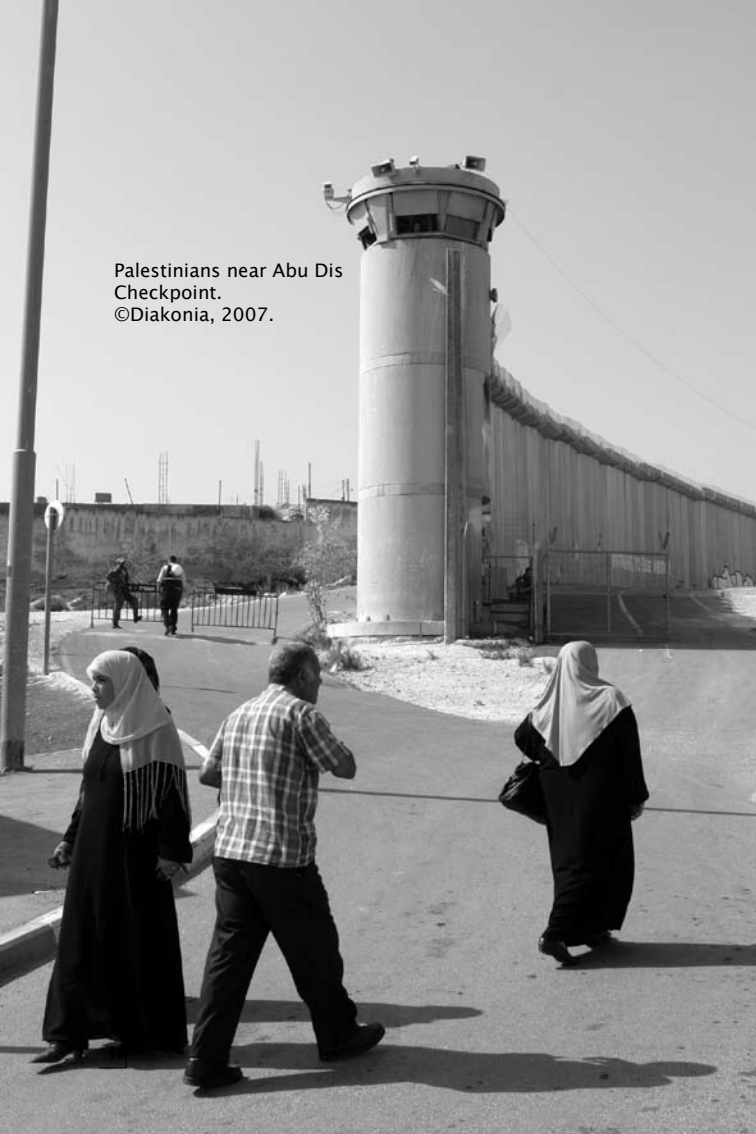
ACRI	Association for Civil Rights in Israel
AP I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977
AP II	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977
GC III	Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949
GC IV	Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 Geneva Convention
ICA	Israeli Civil Administration
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IDF	Israeli Defence Forces
HR IV	Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (1907)
IHL	International Humanitarian Law
IHRL	International Human Rights Law
OCHA	Office for the Coordination of Humanitarian Affairs
oPt	occupied Palestinian territory
PA	Palestinian Authority
PLO	Palestinian Liberation Organisation
UN	United Nations



Ahmad Tawfeeq Abu Hasseh, 17 years old, was shot in the leg when collecting gravel for construction 600 meters from the perimeter fence in the north of the Gaza Strip. The bones in Ahmad's leg were smashed and he had to stay immobilized for a month following surgery. Nevertheless, Ahmad says he will return to collect gravel as he needs to support his family of 17, of which few are employed. 2011
©Anne Paq / Active Stills



Palestinians near Abu Dis
Checkpoint.
©Diakonia, 2007.



What is public international law?

Public international law is a combination of rules and principles governing the relations between States and, sometimes, with non-State actors. Public international law is composed of several branches, including international human rights law, international humanitarian law, international criminal law and general international law as derived from, among other sources, the United Nations Charter. The primary sources of public international law are treaty law and customary international law.

What is treaty law?

Treaty law consists of written agreements that States willingly sign, ratify and are bound to follow. Agreements between States may be called treaties, conventions, charters, statutes or protocols. These agreements are only legally binding on States that have ratified or acceded to them. The basis of treaty law is the principle of *pacta sunt servanda* (“agreements must be respected”).

What is customary international law?

Customary international law consists of “general practice accepted as law”.¹ It includes the “rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way”.² Customary international law is formed by a widespread repetition by States of similar acts over time (State practice), which have occurred out of a sense of obligation (*opinio juris*). As such, these acts must be taken by a significant number of States

¹ Art 38(1)(b) of the Statute of the International Court of Justice.

² Rosenne, *Practice and Methods of International Law*, p. 55.

and must not be rejected by a significant number of States. Customary international law is binding upon all States.

What is international humanitarian law?

International humanitarian law (IHL), also referred to as the law of war or the law of armed conflict, defines the conduct and responsibilities of belligerent States, neutral States, armed groups and individuals engaged in warfare, in relation to each other and to 'protected persons' – namely, combatants *hors de combat* (prisoners of war and sick, wounded and shipwrecked combatants) and civilians.

The fundamental purpose of IHL is to limit the effects of armed conflicts by protecting persons not involved in hostilities and regulating the means and methods of warfare. IHL is the result of a compromise between the principles of military necessity and humanity.

When does IHL apply?

IHL applies to international armed conflicts, including situations of occupation,³ and non-international armed conflicts. IHL does not apply to internal disturbances or tensions such as riots, demonstrations and isolated or sporadic acts of violence.

Armed conflicts between two or more States are called international armed conflicts. Armed conflicts between a State's regular armed forces and one or more armed groups, or between several such armed groups, are called non-international armed conflicts. The rules governing international armed conflicts are more extensive and more detailed than those covering non-international armed conflicts.

³ It should be noted, however, that IHL also applies to cases of belligerent occupation encountering no armed resistance.

IHL applies equally to all parties to a conflict, irrespective of the causes giving rise to that conflict.

What is international human rights law?

International human rights law (IHRL) codifies human rights in various international treaties and customary rules. Fundamental human rights include, but are not limited to, the right to life, the right to food and water, the freedom of thought and expression, the right to health and the right to adequate housing.

A State is obliged to comply with human rights law within its own territory, but also in any territory that is under that State's effective control, even beyond its borders. Effective control refers to the exercise of actual, (or so-called *de facto*), control by a State over another territory or people, for example during an occupation.

What is the relation between IHL and IHRL?

In its Advisory Opinion on the Wall constructed in the Occupied Palestinian Territory, the International Court of Justice (ICJ) considered the relationship between the two bodies of law – IHL and IHRL. The ICJ concluded that in a situation of armed conflict IHL is *lex specialis* (governing the specific subject matter relating to armed conflicts). IHRL, on the other hand, governs the applicability of human rights generally, both during times of armed conflict and in times of peace. Both bodies of law, therefore, apply concurrently during armed conflicts. The ICJ explained that three possible inter-relations between the two bodies of law exist in situations where both apply:

- (i) rights that are only matters of IHL;
- (ii) rights that are only matters of IHRL; and
- (iii) rights that are matters of both bodies of law and should be examined under both IHRL and, as *lex specialis*, IHL.

Therefore, during an armed conflict, each action needs to be examined under IHL, IHRL or both, depending on the circumstances.

What are the main sources of IHL?

A major part of IHL is found in the four Geneva Conventions of 1949 and in the two Additional Protocols of 1977. The Hague Conventions, adopted during the 1899 and 1907 peace conferences in The Hague (The Netherlands), constitute another important IHL source.

The four Geneva Conventions, which are universally ratified today, were adopted after the atrocities perpetrated during the First and Second World Wars to alleviate human suffering in times of armed conflict. The Fourth Geneva Convention focuses on the protection of civilians in times of international armed conflict, including occupation.

The First Additional Protocol of 1977 extends the protection granted to victims of international armed conflicts and contains rules on the conduct of hostilities that define the types of means and methods of warfare that can be used in times of armed conflict. The First Additional Protocol generally applies to cases of international armed conflict and binds States that have ratified it. Moreover, several of its provisions are customary and, therefore, bind all States.

Among others, Article 75 of the First Additional Protocol provides fundamental guarantees that must

be granted to all persons in the power of a party to a conflict. This provision is considered to reflect customary international law.

The Second Additional Protocol of 1977 expands the protection spelled out in Article 3 common to the four Geneva Conventions for situations of non-international armed conflict. Although the Second Additional Protocol only binds States that have ratified it, some of its articles also are regarded as customary international law and, therefore, are universally binding. For example, Article 4, which provides fundamental guarantees for all persons who do not, or no longer, take direct part in hostilities, is regarded as customary.

The First Additional Protocol has been ratified by 174 States, and the Second Additional Protocol by 168 States. Israel has not ratified either of the 1977 Additional Protocols and thus only is bound by the customary rules within these treaties.

What is a belligerent occupation?

A “territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised”.⁴

The occupying power can exercise effective military control even if it is not physically present in the territory itself. If the occupying power is in a position to take military control over the whole area, effective military control persists.

⁴ Art 42 of HR IV (1907).

Occupation ends when the occupying power is no longer exercising effective control over the territory. The occupying power cannot unilaterally decide that occupation has ended.

Occupation does not give the occupying power sovereignty over the territory. Occupation is meant to be temporary and permanent occupation may result in de facto annexation. Under international law, annexation of the occupied territory is unlawful.

What is the law of belligerent occupation?

The law of belligerent occupation mainly consists of the rules contained in Hague Regulation IV of 1907 and in the Fourth Geneva Convention of 1949, several of which have become customary international law.

The law of occupation applies when a territory comes under the effective control of a foreign power.

Who are the protected persons under IHL?

Protected persons are those who find themselves, at any moment or under any circumstance, in the hands of a party to the conflict or occupying power of which they are not nationals. Provided they are in enemy's hands, civilians and combatants *hors de combat* fall within the category of protected persons. Specific categories of persons that generally are considered protected persons include medical and religious personnel, humanitarian relief personnel and civilian journalists.

What are the basic principles governing the conduct of hostilities under IHL?

Distinction

The principle of distinction asserts that the parties to a conflict shall at all times distinguish between civilians and combatants on the one hand, and between civilian and military objects on the other, and that the parties should direct their military operations only against the latter ones.⁵

In so far as objects are concerned, a military objective is one that by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization offers a definite military advantage. This definition may be difficult to apply in practice, especially with respect to objects that may be used both for civilian and military purposes. For example, a TV or a radio station can be a legitimate target if used also by the military command or as a military communication centre. However, if it is used for civilian purposes only, it cannot be a legitimate target.

Based on the principle of distinction, all means and methods of warfare that cannot distinguish between those who take part in hostilities and those who do not or between civilian and military objects are prohibited.

The principle of distinction is part of customary international law.

⁵ Art 48 of AP I.



The Qalandia checkpoint separating Ramallah and Jerusalem. According to OCHA, Since October 2015, 91 new obstacles (checkpoints, roadblocks, earth mounds) have been deployed in addition to 452 pre-existing obstacles, representing a 20 percent increase in their overall number. ©Marwan Hamad, 2017.



Proportionality

The principle of proportionality states that even in the presence of a clear military objective, it is prohibited to launch an attack where it can be expected to cause excessive incidental loss of civilian life, injury to civilians, damage to civilian objects (or a combination of these) compared to the concrete and direct military advantage anticipated.⁶

The principle of proportionality is part of customary international law.

Precautions in attack

The parties to the conflict are obliged to respect the principle of precautions in attack, which supplements the general obligation to distinguish at all times between civilians and combatants, and between civilian and military objects. Accordingly, the parties to an armed conflict must:

- take precautionary measures during military operations to spare the civilian population and civilian objects by, for example, employing the most precise weapons at the disposal of a party and informing civilians of an imminent attack in a given area unless circumstances do not permit;⁷ and
- take precautionary measures to protect the civilian population and civilian objects that are under a party's control against the effects of military operations by, for example, removing them from the vicinity of military objectives.⁸

The principle of precautions is part of customary international law.

⁶ Art 51(5)(b) of AP I.

⁷ Art 57 of AP I.

⁸ Art 58 of AP I.

What is military necessity?

Military necessity has been defined as “the necessity of those measures which are indispensable for securing the ends of the war and are lawful according to the modern laws and usages of war.”⁹ It is the principle whereby a belligerent has the right to utilize any measure required to bring about the successful conclusion of a military operation, provided that such measure is not forbidden by the laws of war.

Who are combatants?

Combatants are members of regular armed forces or armed groups. If captured during an international armed conflict, they must be considered “prisoners of war” if they clearly distinguished themselves from the civilian population while engaged in an attack or in military operations preparatory to an attack. Prisoner of war status grants combatants the special protection defined by the Third Geneva Convention relative to the Treatment of Prisoners of War.

Members of armed groups that are not part of regular armed forces need to conform to four conditions to enjoy prisoner of war status:

- be commanded by a person responsible for his/her subordinates;
- display a fixed distinctive emblem, such as a uniform, recognizable at a distance,¹⁰
- carry arms openly; and

⁹ Lieber Code, Art 14.

¹⁰ Art 44(3) of API sets an exception to this rule when the nature of the hostilities prevents the combatant from distinguishing himself or herself. There is an ongoing legal debate about the precise requirements of the “distinctive emblem” that combatants of non-regular armed forces are required to wear.

- conduct their operations in accordance with the laws and customs of war.¹¹

In case of doubt whether a person enjoys prisoner of war status, she/he should be presumed to be a prisoner of war until a competent court decides otherwise.

Members of groups that do not follow these conditions and individuals that are not part of armed groups who take direct part in the hostilities are not regarded as combatants and do not enjoy the status of prisoners of war. They are therefore protected civilians and lose their immunity from attack only for such time as they take direct part in hostilities.

Who are civilians?

IHL defines a “civilian” as anyone who is not a combatant. In case of doubt whether a person is a civilian, that person shall be presumed to be a civilian.¹²

What does the obligation to protect mean?

The concept of protection of civilians and civilian objects is reflected in the principle of distinction, which prohibits directly targeting civilians and civilian objects but the obligation to protect extends beyond the conduct of hostilities.

Protected persons are entitled, in all circumstances, to respect for their person, their honour, their family rights, their religious convictions and practices and their manners and customs.¹³

¹¹ Art 4 of GC III.

¹² Art 50(1) of AP I.

¹³ Art 27 of GC IV.

Private property must be respected and not confiscated.¹⁴ Parties to the conflict must respect and protect cultural property,¹⁵ humanitarian relief objects¹⁶ and medical units and transports.¹⁷ They also must protect relief workers¹⁸ and facilitate relief actions.¹⁹ Discriminatory measures are forbidden.²⁰

Protection is enhanced during situations of military occupation. Among others, the occupying power must facilitate the work of all institutions devoted to the care and education of children,²¹ the work of relief organizations²² and civilian civil defence organizations.²³

Protection is also provided for the civilian population as a whole: collective punishment is prohibited;²⁴ forced transfer and deportations are prohibited and amount to war crimes;²⁵ the occupying power must ensure adequate food and medical supplies and requisition of civilian objects is permitted only when population needs are taken into account.²⁶ Objects essential for the survival of the population should not be attacked, destroyed, removed or rendered useless²⁷ and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, amounts to a war crime.²⁸

¹⁴ Art 46 of HR IV (1907).

¹⁵ Rules 38, 39 and 40 of the ICRC Customary IHL Rules.

¹⁶ Ibid: Rule 32.

¹⁷ Ibid: Rules 28 and 29.

¹⁸ Ibid: Rule 31 and Art 71 of AP I.

¹⁹ Art 70 of AP I and Art 59 of GC IV.

²⁰ Art 27 of GC IV.

²¹ Art 50 of GC IV.

²² Art 59 of GC IV.

²³ Art 63(1) of AP I.

²⁴ Arts 33 of GC IV, and Art 50 of HR IV (1907).

²⁵ Art 49 and 147 of GC IV.

²⁶ Art 55 of GC IV and Art 69 of AP I.

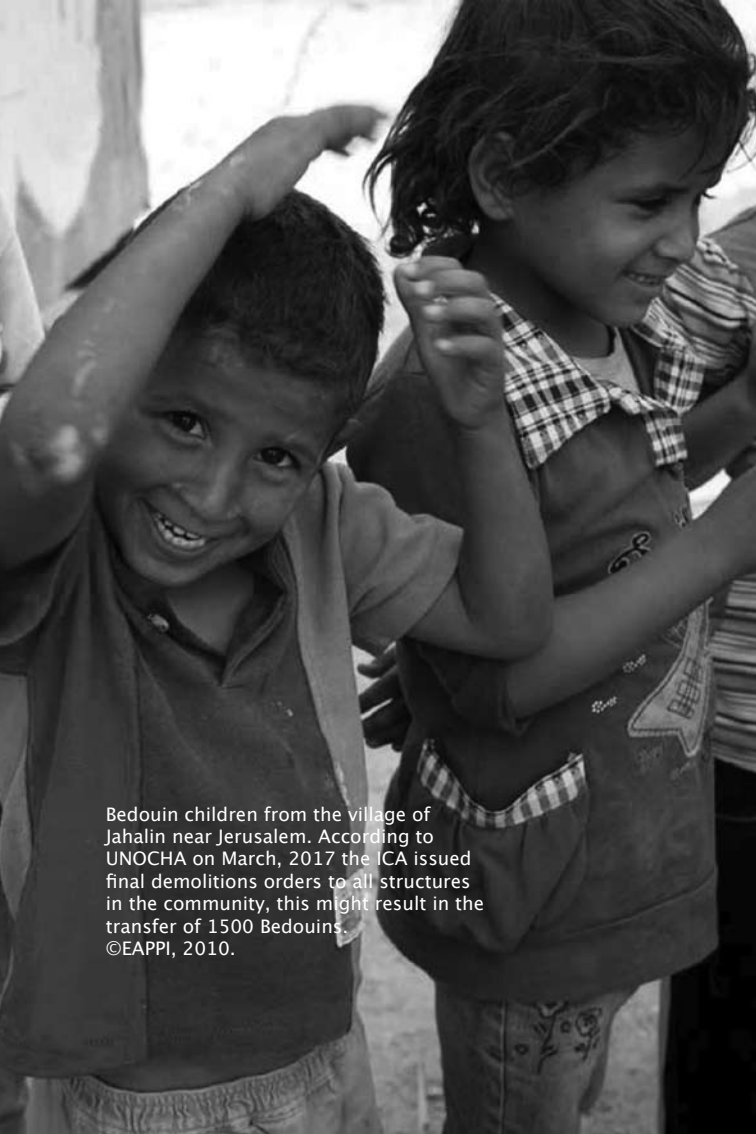
²⁷ Art 54 of AP I.

²⁸ Art 147 of GC IV.

Rubble of a Gazan home demolished during the Israel's Operation Cast Lead in the Gaza Strip. During the 22 day offensive on the Gaza Strip, approximately 1,400 Palestinians, including 300 children, lost their lives. In addition, the homes of roughly 60,000 Palestinian families were demolished or suffered major damages.
©Palestina Gruppo, 2009







Bedouin children from the village of Jahalin near Jerusalem. According to UNOCHA on March, 2017 the ICA issued final demolitions orders to all structures in the community, this might result in the transfer of 1500 Bedouins.
©EAPPI, 2010.

What are the responsibilities of a State under International Law?

The basic principle of ‘State responsibility’ in international law provides that any State that violates its international obligations must be held accountable. More concretely, the notion of State responsibility entails that States that do not respect their international duties are responsible for immediately ceasing their illegal actions, offering, if required, appropriate assurances and guarantees of non-repetition and making reparations to the injured in the form of restitution, compensation or satisfaction.

States have legal responsibilities towards other States, as well as towards individuals according to different sources of international law.

What are the responsibilities of third States?

International law not only spells out what a violating State must do, but it also indicates how third States – the international community – must react to violations of international law by other States.

Article 1 common to the four Geneva Conventions obliges third States “to respect and ensure respect” for IHL in all circumstances. This means that, by virtue of having ratified the Geneva Conventions, third States are bound to take concrete measures to ensure the respect of IHL by other States and actors. Third States should not encourage a party to a conflict to violate IHL. Third States additionally should not take action that would assist in the commission of violations, such as arms transfers and sales of weapons to a State responsible for a breach of its international obligations. Moreover, actions taken by third States towards fulfilling their

obligations to “ensure respect” under common Article 1 should not be viewed as illegal interference in the internal affairs of a sovereign State.

The ICRC commentary to Article 1 mentions that “the Contracting Parties should not be content merely to apply its provisions themselves, but should do everything in their power to ensure that the humanitarian principles underlying the Conventions are applied universally”.

In case of grave breaches, which are the most serious forms of war crimes and are listed in article 147 of the Fourth Geneva Convention, all High Contracting Parties are obliged to search for suspects and bring them to trial or extradite them to another State or an international tribunal where they will be charged and tried for their actions.²⁹

If a third State is involved in a violation of an international obligation by another State – by (i) aiding or assisting it; (ii) directing and controlling the commission of the violation; (iii) coercing the violating State to do so –, the third State must cease the violation, provide guarantees of non-repetition and offer reparations.³⁰

In case of a serious breach of a peremptory norm of international law (*jus cogens*), additional responsibilities also arise for all States to cooperate to end the breach, not to recognize as lawful the situation created by the breach and not to aid or assist in the maintenance of that situation.³¹

²⁹ Arts 146, 147 of GC IV.

³⁰ Arts 16–18 of the International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts (2001).

³¹ Ibid: Art 41.

What are offenses in international criminal law?

War crimes are serious violations of IHL that give rise to individual criminal responsibility. Examples of war crimes include attacking civilians or civilian objects, pillaging a town or place, using human shields.

In addition, due to their extreme gravity, some war crimes amount to “grave breaches” such as torture, wilful killing or the taking of hostages. As indicated above, the commission of a grave breach gives rise to an obligation for all States to search for those allegedly responsible for such crime and to prosecute or extradite them. A list of grave breaches can be found in Article 147 of the Fourth Geneva Convention.³²

War crimes can be committed both in international and non-international armed conflicts. This was affirmed by the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda and subsequently has been reaffirmed in the Rome Statute of the International Criminal Court.

³² Also: Art 50 GC I, Art 51 GC II, Art 130 GC III, and Art 85 of AP I.

Karmel settlement in the West Bank.
As of December 2016, over 500,000
Israeli settlers are living illegally in 247
settlements throughout the West Bank.
©Diakonia, 2004.






The Wall near the Jerusalem periphery. Israel is constructing a 490-mile-long, 25-foot-high wall in parts of the West Bank, the estimate cost is \$3.4 billion. The Wall swings in and out of the West Bank, annexing land and separating Palestinians from each other. The Electronic Intifada, 2016.
©Diakonia, 2004.









Remnants of Qassam rockets stored at the police station in Sderot. The southern part of Israel, in particular, has lived under the threat of such attacks coming from armed groups in the Gaza Strip. These weapons have indiscriminate effects when used in populated areas since they do not allow to aim precisely at military objectives.
©Diakonia, 2007

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An Israeli watchtower, along the Wall between the Gaza Strip and Israel, adjacent to the Erez crossing point, in the northeastern Gaza Strip. In the foreground are rubble remnants from "Operation Cast Lead".

©Diakonia, 2011.







Palestinian women run as they are being targeted by Israeli gunfire. In the background, wearing fluorescent yellow jackets, are some members of the International Solidarity Movement who act voluntarily as a protective presence when farmers collect wheat in the "buffer zone", 15 June 2010.

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